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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:16-cr-00046-GMN-PAL

8 Plaintiff,

9 v.

ORDER

10 CLIVEN BUNDY, et al.,

(Ex Parte App. Paralegal
Access – ECF No. 1305)

11 Defendants.

12 This matter is before the court on Defendant Cliven Bundy's Ex Parte Application for
13 Paralegal Access (ECF No. 1305), filed January 17, 2017. This Application is referred to the
14 undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.
15 As the application was not filed under seal, the court will not direct that this order be sealed.

16 **BACKGROUND**

17 The Application requests an order authorizing Roger I. Roots, to have visitation and access
18 to Cliven Bundy at the Nevada Southern Detention Center in Pahrump, Nevada. Counsel for Mr.
19 Bundy, Bret Whipple states that he hired Mr. Roots in the capacity of a paralegal to assist him in
20 the underlying case. Mr. Bundy retained Whipple in late October 2016. Mr. Whipple represents
21 that Roots brings a great deal of knowledge regarding this case to Bundy's defense team. Although
22 Mr. Roots "is a law school graduate and an attorney licensed in the state of Rhode Island," he will
23 purportedly "be acting solely in a paralegal support capacity" under Whipple's direct supervision.
24 Given the roughly 60-mile distance between Pahrump and Las Vegas, traveling back and forth to
25 the prison facility to meet with Mr. Bundy requires significant time and planning for Whipple.
26 Therefore, counsel asserts that the defense team would greatly benefit from Root's ability to meet
27 and assist Mr. Bundy in trial preparations.

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1 This is not the first time that a defendant in this case has asked the court for an order
 2 allowing Mr. Roots to have contact visits. On November 29, 2016, pro se Defendant Ryan C.
 3 Bundy filed an Ex Parte Motion to be Allowed In-Custody Contact Visits From His Defense Team
 4 (ECF No. 1044). The motion requested an order allowing contact visits with five individuals to
 5 assist in trial preparation, including Mr. Roots. Ryan Bundy indicated that these individuals would
 6 assist in: “(a) review of underlying facts/discovery, (b) motion/brief research and writing, (c)
 7 trial/witness preparation, (d) investigation, (e) paperwork delivery to/from for purposes of filing
 8 with the court.” *Id.* The court denied the motion and informed Ryan Bundy that he is “not entitled
 9 to designate lay persons, supporters, or others as a part of his defense team for the purpose of
 10 receiving access to and contact visits with these individuals on the same terms as detention facility
 11 staff and the United States Marshal Service (“USMS”) provide for counsel of record.” *See* Jan. 9,
 12 2017 Order (ECF No. 1254) at 2. Additionally, the court advised Ryan Bundy that he was not
 13 entitled “to designate an out of state attorney, who has not applied for admission pro hac vice, as
 14 his legal representative.” *Id.* The order noted:

15 Mr. Roots filed a declaration (ECF No. 1077) captioned “Notice of Interference by
 16 U.S. Marshals and the Corrections Corporation of America” in this case on
 17 December 6, 2016. In it Mr. Roots identifies himself as a resident of Montana and
 18 an attorney licensed in Rhode Island and various federal circuits, including the
 19 Ninth Circuit, who has helped Mr. Bundy with researching and “preparing various
 20 things for his defense over the past year.” He indicates that he functioned as a
 21 paralegal for Mr. Bundy in the Oregon prosecution and was present at his defense
 22 table throughout the trial. The notice states that Mr. Roots attempted to visit Mr.
 23 Bundy at the detention facility in Pahrump “to help Ryan Bundy prepare for his
 defense” and that he was carrying various defense documents “urgently requiring
 his signature for filing in this and other courts.” Mr. Roots is not admitted to the
 bar of this state or admitted pro hac vice in this case. He may not engage in the
 unauthorized practice of law in this district. Mr. Bundy has court appointed standby
 counsel to assist him. If Mr. Bundy believes he needs additional CJA resources to
 assist in his defense he may apply for that assistance, the court will consider his
 request, and if appropriate, appoint an investigator or paralegal qualified to provide
 CJA defense services. . . .

24 In short, the court will not approve contact visits or other access on terms provided
 25 for counsel of record to individuals Mr. Bundy designates as members of his
 defense team. Mr. Bundy has standby counsel and may apply for additional CJA
 resources if he believes he needs them.

26 *Id.* at 2–4.

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DISCUSSION

Among the inherent powers incidental to all courts is the power to regulate and discipline attorneys who appear before it. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). Such power extends to enjoining and sanctioning the unauthorized practice of law. *See, e.g., United States v. Johnson*, 327 F.3d 554, 560 (7th Cir. 2003); *see also Gallo v. U.S. Dist. Ct. Dist. of Arizona*, 349 F.3d 1169, 1179–80 (9th Cir. 2003) (“Federal courts have inherent and broad regulatory authority to make rules respecting the admission, practice, and discipline of attorneys in the federal courts.”). Federal courts look to state law for guidance in determining whether an individual has engaged in the unauthorized practice of law. *See, e.g., In re Reynoso*, 477 F.3d 1117, 1125 (9th Cir. 2007) (applying California law). In Nevada, only a licensed attorney—an active member of the State Bar of Nevada admitted to practice under the Nevada Supreme Court Rules—is duly authorized to practice law. *Guerin v. Guerin*, 993 P.2d 1256, 1258 (Nev. 2000). The purpose of requiring that only licensed attorneys engage in the practice of law is to “ensure that the public is served by those who have demonstrated training and competence and who are subject to regulation and discipline.” *In re Discipline of Lerner*, 197 P.3d 1067, 1069, 1072 (Nev. 2008).

The Nevada Supreme Court has acknowledged that questions regarding what activities constitute the practice of law are determined on a case-by-case basis and are not susceptible to a bright-line rule. *Id.* at 1072–73. However, the “overarching principle” directs that the practice of law involves any activity that “requires the exercise of judgment in applying general legal knowledge to a client’s specific problem.” *Id.* at 1069. A “touchstone” of whether an activity constitutes the unauthorized practice of law is whether an unlicensed person offers “advice or judgment about legal matters to another person for use in a specific legal setting.” *Id.* at 1072 n.12 (citation omitted). Examples of such unauthorized activities include discussion of case authority and legal strategy, evaluating legal claims, preparing documents, filing documents, and appearing in court on behalf of someone else. *Id.* However, law practice “is not limited to conducting litigation” in court proceedings. *In re Virissimo*, 354 B.R. 284, 290 (Bankr. D. Nev. 2006).

The Local Rules addressing pro hac vice admission require that an “attorney who has been retained or appointed to appear in a particular case but is not a member of the bar of this court *may*

1 *appear* only with the court’s permission.” LR IA 11-2 (emphasis added). The Ninth Circuit has
2 held that the conduct triggering the *pro hac vice* requirement extends beyond physical appearances
3 in court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 825 (9th Cir. 2009). An out-of-
4 state attorney must “apply for *pro hac vice* admission if that attorney appears in court, signs
5 pleadings, or is the exclusive contact in a case with the client or opposing counsel.” *Id.* A criminal
6 defendant’s Sixth Amendment right to counsel of his choice “includes the right to have an out-of-
7 state lawyer admitted *pro hac vice*.” *In re Bundy*, 840 F.3d 1034, 1041 (9th Cir. 2016) (quoting
8 *United States v. Walters*, 309 F.3d 589, 591 (9th Cir. 2002)). “But because counsel from other
9 jurisdictions may be significantly more difficult to reach or discipline than local counsel, this right
10 is circumscribed in several important respects.” *Id.* (citation omitted).

11 Here, the application requests permission for Mr. Roots, an attorney licensed in Rhode
12 Island but not Nevada, to perform “paralegal” work at Whipple’s direction. However, Mr. Roots
13 has previously filed papers with the court on behalf of co-defendant Ryan Bundy indicating that
14 he assisted in Ryan Bundy’s defense in Oregon, was assisting in Ryan Bundy’s defense in this
15 case, and had been carrying and preparing defense documents and papers requiring Ryan Bundy’s
16 signature while attempting to obtain contact visit with Ryan in Pahrump. The current application
17 indicates that Roots will “meet and assist” Cliven Bundy “to prepare for trial.” App. (ECF
18 No. 1305) at 2. It is unclear from the application whether Cliven Bundy or Whipple are aware that
19 Roots previously assisted Ryan Bundy in the Oregon prosecution and attempted to gain access to
20 Ryan Bundy here in Nevada as part of his “defense team.”


21 Ryan and Cliven Bundy have both filed motions to sever, and other papers with the court
22 arguing they have antagonistic defenses in this case. The application does not address the conflicts
23 of interest in Mr. Roots attempting to provide paralegal and other legal services on behalf of Ryan
24 Bundy and the current request that he provide paralegal services on behalf of Cliven Bundy under
25 Mr. Whipple’s direction. Additionally, the court is advised that Ryan Bundy has now made a
26 request, through the court’s CJA voucher system, that Mr. Roots be appointed as a paralegal to
27 provide defense services on his behalf. Under these circumstances, the court will not enter an
28 order allowing Mr. Roots to have access to Cliven Bundy at the Pahrump detention facility on the

1 same terms detention facility staff and the USMS allow for counsel of record.

2 For the reasons explained,

3 **IT IS ORDERED** Defendant Cliven Bundy's Ex Parte Application for Paralegal Access
4 (ECF No. 1305) is DENIED without prejudice.

5 Dated this 21st day of February, 2017.

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7 PEGGY A. LEEN
8 UNITED STATES MAGISTRATE JUDGE
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